

Rule 702. Bail

(a) Approval of Bond Procurers Required. No person shall engage in the business of procuring bail bonds, either cash or surety, for persons under detention until an application is approved by the State Court Administrator's Office. Approval shall permit the applicant to issue bail bonds throughout the State of Minnesota. Nothing in this section shall infringe upon a judge's discretion in approving a bond. The application form shall be obtained from the State Court Administrator's Office. The completed application shall then be filed with the State Court Administrator's Office stating the information requested and shall be accompanied by verification that the applicant is licensed as an insurance agent by the Minnesota Department of Commerce. The approval granted under this rule may be revoked or suspended by the State Court Administrator's Office and such revocation or suspension shall apply throughout the State of Minnesota. Approved applicants are required to apply for a renewal of approval within a time period (not less than one year) established by the State Court Administrator's Office.

(b) Corporate Sureties. Any corporate surety on a bond submitted to the judge shall be one approved by the State Court Administrator's Office and authorized to do business in the State of Minnesota.

(c) Surety Insolvency. Whenever a corporate surety becomes insolvent, the local agent shall notify the State Court Administrator's Office and the court in every county in which it has issued or applied to issue bonds, in writing immediately. Within fourteen (14) days after such notice to the court, the agent shall file with the trial court administrator a security bond to cover outstanding obligations of insolvent surety, which may be reduced automatically as the obligations are reduced. In the absence of such surety or security bond, a summons shall be sent to all principals on the bonds of the surety.

(d) Posting Bonds. Before any person is released on bond, the bond must be approved by a judge after submission to the prosecuting lawyer for approval of form and execution and filed with the court administrator during business hours or thereafter with the custodian of the jail. In cases where bail has been set by the court and the defendant has provided a bail bond with corporate surety, approval by a judge is unnecessary if the bond conforms to Form 702 as published by the state court administrator.

(e) Forfeiture of Bonds. Whenever a bail bond is forfeited by a judge, the surety and bondsman shall be notified by the court administrator in writing, and be directed to make payment in accordance with the terms of the bond within ninety (90) days from the date of the order of forfeiture. A copy of the order of forfeiture shall be forwarded with the notice.

(f) Reinstatement. Any motion for reinstatement of a forfeited bond or cash bail shall be supported by a petition and affidavit and shall be filed with the court administrator. A copy of said petition and affidavit shall be served upon the prosecuting attorney and the principal of the bond in the manner required by Minn. R. Civ. P. 4.03(e)(1). A petition for reinstatement filed within ninety (90) days of the date of the order of forfeiture shall be heard and determined by the judge who ordered the forfeiture, or the chief judge. Reinstatement may be ordered on such terms and conditions as the court may require. A petition for reinstatement filed between ninety (90) days and one hundred eighty (180) days from date of forfeiture shall be heard and determined by the judge who ordered forfeiture or the judge's successor and reinstatement may be ordered on such terms and conditions as the court may require, but only with the concurrence of the chief judge and upon the condition that a minimum penalty of not less than ten percent (10%) of the forfeited bail be imposed. No reinstatement of a forfeited bond or cash bail shall be allowed unless the petition and affidavit are filed within one hundred eighty (180) days from the date of the order of forfeiture.

(g) Forfeited Bail Money. All forfeited bail money shall be deposited in the state treasury in the manner provided by law.

(h) Bonding Privilege Suspension. A failure to make payment on a forfeited bail within ninety (90) days as above provided shall automatically suspend the surety and its agent from writing further bonds. Such suspension shall apply throughout the State of Minnesota and shall continue for a period of thirty (30) days from the date the principal amount of the bond is deposited in cash with the court administrator.

(Amended effective January 1, 1994; amended effective January 1, 1996; amended effective January 1, 1998; amended effective February 1, 2005; amended effective March 1, 2009.)

Advisory Committee Comments - 1997 Amendment

This Rule is derived from 4th Dist. R. 8.02. Pretrial release is governed by Minn. R. Crim. P. 6, and this rule supplements the provisions of that rule. The Task Force believes that specific, written standards relating to the issuance and forfeiture of bail bonds would be useful to practitioners, courts, and to those issuing bonds.

The Minnesota Supreme Court Advisory Committee on Rules of Criminal Procedure recommended that this local rule be incorporated in the General Rules of Practice for the District Courts for uniform statewide application and the Task Force concurs in that recommendation. The 1997 amendment continues the practice of statewide uniformity, established an uniform bail bond application procedure and making the posting of bonds easier by using a standard form. The rule conforms the rule to the practice in use prior to 1997.

Rule 702(h) was amended in 1993, effective January 1, 1994, to establish statewide suspension of bonding privileges for a surety and a surety's agent in the event of failure to make payment on a forfeited bond. This rule is necessary to ensure that irresponsible sureties are not allowed to move from district to district.

*The power to revoke bail bonding privileges must be exercised sparingly. Courts considering this action should give consideration to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the bond person. See, e.g., *In re Cross*, 617 A.2d 97, 100-02 (R.I. 1992) (show cause hearing procedure based on probable cause, with clearly defined burden of proof, not inherently unconstitutional); *American Druggists Ins. Co. v. Bogart*, 707 F.2d 1229, 1234-36 (11th Cir. 1983) (corporate surety authorized by Secretary of Treasury has right under U.S. Constitution to present bonds to court for approval).*

Advisory Committee Comment - 2004 Amendment

Rule 702 is amended in 2004 to allow it to operate appropriately under the system of statewide approval of bond procurers. Under the revised rule, the State Court Administrator's Office reviews and approves bond procurers, and that approval is then applicable in all district courts. The changes in the rule are not intended to change the rule other than to effect this centralization of the agent approval process.

Advisory Committee Comment - 2008 Amendment

Rule 702(d) is amended to remove Form 702 from the rules, and to permit the maintenance and publication of the form by the state court administrator. The form, together with other court forms, can be found at www.mncourts.gov.